

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #1	CCRB Case #: 201708260	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 09/29/2017 4:23 PM	Location of Incident: 72-02 Astoria Boulevard South	Precinct: 114	18 Mo. SOL 3/29/2019	EO SOL 3/29/2019	
Date/Time CV Reported Sat, 09/30/2017 7:48 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/06/2017 11:05 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Rendon	02545	947942	114 PCT
2. POM Konstanti Panagiotopoulos	06395	961549	114 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Rendon	Force: PO Jose Rendon used physical force against § 87(2)(b)	
B.POM Jose Rendon	Abuse: PO Jose Rendon damaged § 87(2)(b)'s property.	
C.POM Jose Rendon	Abuse: PO Jose Rendon searched § 87(2)(b)	
D.POM Konstanti Panagiotopoulos	Abuse: PO Konstantinos Panagiotopoulos searched the vehicle in which § 87(2)(b) was an occupant.	

## Case Summary

On September 30, 2017, § 87(2)(b) filed this complaint with IAB, generating original log #17-37848. The log was then forwarded to the CCRB, where it was received on October 6, 2017. On September 29, 2017, at approximately 4:23 PM, § 87(2)(b) was involved in a three-vehicle collision in the vicinity of 72-02 Astoria Boulevard South in Queens. PO Jose Rendon and PO Konstantinos Panagiotopoulos of the 114<sup>th</sup> Precinct responded. PO Rendon allegedly attempted to remove § 87(2)(b) from his vehicle by pulling forcibly on the area where § 87(2)(b)'s left shoulder met his neck (**Allegation A: Force**, § 87(2)(g)), breaking the clasp of § 87(2)(b)'s gold chain in the process (**Allegation B: Abuse of Authority**, § 87(2)(g)). PO Rendon then allegedly searched § 87(2)(b) (**Allegation C: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was briefly detained within the officers' RMP while they gathered the requisite information for an accident report. During this period of time, PO Panagiotopoulos allegedly searched § 87(2)(b)'s vehicle (**Allegation D: Abuse of Authority**, § 87(2)(g)). Ultimately, PO Rendon released § 87(2)(b) and issued him a summons for Disorderly Conduct – Obstruction of Vehicular Traffic. The investigation obtained no video of the incident in question. An attorney was consulted with regard to Allegations C and D.

## Findings and Recommendations

**Allegation A—Force: PO Jose Rendon used physical force against § 87(2)(b)**

**Allegation B—Abuse of Authority: PO Jose Rendon damaged § 87(2)(b)'s property.**

§ 87(2)(b) (Board Review 01) stated that after the collision, he came to a stop and exited his vehicle to inspect the damage. His legs and the right side of his lower back were in pain due to the collision. PO Rendon approached and instructed § 87(2)(b) and the other drivers to move their vehicles from the center lane, where the collision occurred, to the right-hand lane. § 87(2)(b) reentered his vehicle and moved it to the right lane, as did the other drivers.

§ 87(2)(b) then exited his vehicle and continued to inspect the damage. PO Rendon approached again and yelled at § 87(2)(b) to reenter his vehicle. Frustrated with PO Rendon's demeanor, § 87(2)(b) yelled, "Okay. Okay." He reentered the driver's seat of his vehicle and slammed the door shut.

PO Rendon rushed to § 87(2)(b)'s vehicle and opened the front driver-side door. He did not say anything to § 87(2)(b). Rather, he took hold of the area where the left side of § 87(2)(b)'s neck met his left shoulder and pulled, scratching § 87(2)(b)'s skin in that area. § 87(2)(b) did not resist in any manner. He raised his hands above his shoulders and exited the vehicle of his own power.

Shortly afterward, while § 87(2)(b) waited in the rear of the officers' RMP, he noticed that his gold chain was slipping from around his neck. He believed that the chain had been broken when PO Rendon grabbed and pulled on the area near his neck. § 87(2)(b) yelled to PO

Rendon that his chain was broken and falling off. PO Rendon responded that he should not worry, as the chain was not going anywhere.

At 8:15 PM the same evening, § 87(2)(b) visited § 87(2)(b) due to the pain to his legs and back, caused by the collision, and now also on his neck, caused by PO Rendon. Medical records from the hospital (Privileged Documents) reveal that he sustained bruising to the left side of his neck and that he complained of an officer scratching him. He was diagnosed as having no serious injury.

§ 87(2)(b) provided two photographs showing scratches on the area where his neck met his left shoulder (Board Review 02). He also provided time-stamped images showing that these photographs were taken at 7:30 PM on September 29, 2017, roughly three hours after the incident (Board Review 03). Additionally, § 87(2)(b) provided two photographs showing the broken clasp on his gold chain (Board Review 04), as well as time-stamped images showing that these photographs were taken at 6:40 PM on September 29, 2017, roughly two hours after the incident (Board Review 05). Lastly, § 87(2)(b) provided a photograph of a receipt from a jewelry repair shop for a \$30.00 repair to the clasp (Board Review 06). The receipt was dated October 7, 2017.

PO Rendon (Board Review 07) stated that § 87(2)(b) repeatedly failed to reenter his vehicle despite commands that he do so, causing a safety concern for himself, for the officers, and for other motorists on the road. PO Rendon guided § 87(2)(b) toward his vehicle and again told § 87(2)(b) to remain inside, but § 87(2)(b) was not cooperative. PO Rendon was standing immediately adjacent to § 87(2)(b) and he was certain that § 87(2)(b) heard his instructions.

Because of the above-mentioned safety risk, PO Rendon felt that he needed to remove § 87(2)(b) from the roadway and to summons § 87(2)(b) for Disorderly Conduct – Obstruction of Vehicular Traffic. As such, he placed § 87(2)(b) in handcuffs and lodged him inside of the RMP for the duration of the incident.

When PO Rendon turned § 87(2)(b) around to place him in handcuffs, § 87(2)(b) reached toward his vehicle, suggesting that he wanted to get back inside. However, PO Rendon told § 87(2)(b) that he could not reenter the vehicle. § 87(2)(b) did not return to his vehicle at this time.

PO Rendon did not physically remove § 87(2)(b) from the vehicle or attempt to do so. He did not grab § 87(2)(b)'s shoulder and or pull him from the vehicle. He did not apply pressure to the area where § 87(2)(b)'s neck and shoulder met.

PO Rendon placed § 87(2)(b) in handcuffs and lodged § 87(2)(b) in the rear of the RMP without incident.

§ 87(2)(b) made no complaint about any physical contact with PO Rendon. He also made no mention of a gold chain he was wearing, or any other property, having been damaged. PO Rendon did not recall § 87(2)(b) wearing any jewelry.

PO Panagiotopoulos (Board Review 08) stated that while he spoke with another of the three drivers, he briefly looked in the direction of § 87(2)(b)'s vehicle. He saw that § 87(2)(b) had exited his vehicle, was standing in the middle lane, and appeared to be speaking to someone on a cell phone. PO Panagiotopoulos heard PO Rendon tell § 87(2)(b) two or three times to get back in his vehicle. PO Panagiotopoulos did not look over to see what taking place at this time. Five to ten seconds later, PO Panagiotopoulos again looked in the direction of PO Rendon and § 87(2)(b). He saw that PO Rendon had placed § 87(2)(b) in handcuffs.

PO Panagiotopoulos did not see PO Rendon attempt to remove § 87(2)(b) from his vehicle by taking hold of his neck or shoulder. He did not see PO Rendon use any physical force whatsoever.

According to PO Panagiotopoulos, § 87(2)(b) never complained about PO Rendon's behavior and never complained of pain or injury. § 87(2)(b) also never complained that a chain he wore around his neck was broken. PO Panagiotopoulos did not see if § 87(2)(b) wore a chain or if such a chain was broken. He did not witness PO Rendon damage any of § 87(2)(b)'s property.

§ 87(2)(b) (Board Review 09) and § 87(2)(b) (Board Review 10) were the other two drivers involved in the collision. § 87(2)(b) did not notice whether any other driver was unwilling to clear the roadway or comply with the officers' direction. § 87(2)(b) however, described § 87(2)(b) exiting his vehicle and running around frantically. He was in the left lane and was blocking traffic. PO Rendon approached § 87(2)(b) and asked him to reenter his vehicle. He complied but did not calm down and continued to wave his arms around through the open window. PO Rendon then ran toward § 87(2)(b)'s vehicle. At this time, § 87(2)(b) exited his vehicle to assess the damage. Neither he nor § 87(2)(b) saw what happened next between § 87(2)(b) and PO Rendon. Neither paid attention to § 87(2)(b) or PO Rendon until they saw the latter escorting the former to the RMP in handcuffs. They did not witness the interaction during which § 87(2)(b) was handcuffed. § 87(2)(b) also stated that he did not hear § 87(2)(b) make any complaint to the officers from inside of the RMP.

A UF-49 prepared by Captain John Portalatin of Patrol Borough Queens North on September 30, 2017 (Board Review 11) reveals that § 87(2)(b) made the same force allegation, that PO Rendon denied making the alleged contact with § 87(2)(b) and that PO Panagiotopoulos denied witnessing the interaction in question. The incident was referred to PBQN Investigation for further inquiry. As of December 18, 2017, Sgt. Rohs of PBQN Investigations, who was assigned to the case, had not yet arrived at any disposition.

PO Rendon stated that he did not prepare a TRI report in regards to this incident. A TRI report was not prepared until November 4, 2017 (Board Review 12). It was entered and approved by Sgt. Matthew Stanton, the 114<sup>th</sup> Precinct Assistant Integrity Control Officer. The TRI report notes § 87(2)(b)'s allegation that PO Rendon grabbed "the back of his neck," causing abrasions. Attached to the TRI report are the same injury photographs which § 87(2)(b) provided to IAB and to the CCRB. The TRI report also notes that PO Rendon denied making contact with § 87(2)(b) and that he believed § 87(2)(b) may have sustained the reported injuries during the precipitating vehicle accident.

According to Patrol Guide Procedure 221-01 (Board Review 13), an officer may use force to ensure safety, to protect human life, or when it is necessary to place a person in custody. In all cases, any application of force must be reasonable given the circumstances.

§ 87(2)(g)

§ 87(2)(g)

**Allegation C—Abuse of Authority: PO Jose Rendon searched** § 87(2)(b)

An attorney was consulted with regard to this allegation.

§ 87(2)(b) stated that after PO Rendon placed him in handcuffs, PO Rendon reached into his front and rear pants pockets. In his pockets § 87(2)(b) was carrying a cell phone, his wallet, and his keys. He was not carrying any weapon or any other items. PO Rendon removed the phone, wallet, and keys from § 87(2)(b)'s pockets. § 87(2)(b) did not know if PO Panagiotopoulos or the other drivers were in a position to see PO Rendon reach into his pockets.

PO Rendon stated that he intended to summons § 87(2)(b) but never intended to arrest him. Prior to placing § 87(2)(b) in the rear of the RMP, per protocol, he patted down § 87(2)(b)'s waistband and pockets to make sure that § 87(2)(b) was not armed. PO Rendon felt nothing on § 87(2)(b)'s person that might be a weapon and there was no other indication that § 87(2)(b) might be armed. PO Rendon did not reach into any of § 87(2)(b)'s pockets.

PO Panagiotopoulos did not recall if PO Rendon frisked or searched § 87(2)(b) before lodging § 87(2)(b) in the rear of the RMP. § 87(2)(b) stated that he did not observe any interaction between § 87(2)(b) and PO Rendon before § 87(2)(b) was placed in the RMP. § 87(2)(b) likewise, stated that he did not see any officer frisk or search § 87(2)(b).

According to People v. Reid 24 N.Y.3d 615 (Board Review 14 and 15), independent of whether or not an officer has a legal basis on which to arrest an individual, the search of said individual is not justified as “incident to lawful arrest” if the officer does not actually intend to make an arrest at the time of the search. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

However, according to People v. Gamble 620 N.Y.S.2d 655 (Board Review 17), where a sufficient basis for detention exists – in that case, detention within a police vehicle in order to perform a show-up – an officer may conduct a frisk as a routine safety measure preliminary to lodging a suspect in a police vehicle. Similarly, in In re D'Angelo H., 584 N.Y.S.2d 699 (Board Review 18), the court held that an officer was justified in performing protective frisks prior to transporting two suspected truants to their school. These rulings establish that even in non-arrest situations, such as that in question here, an officer may lawfully perform a frisk for weapons prior to lodging an individual within a police vehicle.

§ 87(2)(g)

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**Allegation D—Abuse of Authority: PO Konstantinos Panagiotopoulos searched the vehicle in which § 87(2)(b) was an occupant.**

An attorney was consulted with regard to this allegation.

§ 87(2)(b) stated that after he was lodged in the RMP, PO Rendon asked him if there was anything illegal inside of his vehicle. § 87(2)(b) responded that there was not. This was true; there was nothing illegal in the vehicle. PO Rendon also asked § 87(2)(b) where the paperwork for his vehicle was located. § 87(2)(b) informed PO Rendon that the documents were in his glove compartment. He could not see his vehicle from his position inside of the RMP.

PO Panagiotopoulos was not in sight at this time. Later, PO Panagiotopoulos approached PO Rendon with § 87(2)(b)'s paperwork. PO Rendon remained in sight for the entirety of the

incident and so § 87(2)(b) knew that PO Rendon did not enter § 87(2)(b)'s vehicle. No other officers ever responded to the incident, and so § 87(2)(b) believed that PO Panagiotopoulos entered his vehicle.

When § 87(2)(b) returned to his vehicle, he found that the trunk was open and a speaker box in the trunk had been moved. The trunk had not been open when § 87(2)(b) initially exited his vehicle, after the collision. Additionally, § 87(2)(b) found items in the interior disturbed. Not only had the paperwork been removed from glove compartment, but several items which had been neatly and tightly arranged in a tray on the center console, including cologne, lotion, detergent, and a box of business cards, had been disturbed.

PO Panagiotopoulos stated that after § 87(2)(b) was lodged in the RMP, he went to § 87(2)(b)'s vehicle to retrieve the registration. § 87(2)(b) did not tell the officers to look for his documents in the vehicle, but PO Panagiotopoulos assumed that this was where he would find them. He located the documents on the passenger's side, either on the seat or in the glove compartment; he did not recall where he located them, specifically. PO Panagiotopoulos did not recall opening or inspecting the trunk or any other compartment. He did not disturb any items in center console and did not search the vehicle beyond obtaining § 87(2)(b)'s documents.

PO Rendon, however, stated that it was he who retrieved § 87(2)(b)'s documents from the vehicle. He denied opening the glove compartment or trunk, and stated that the trunk had not been opened from the collision. Additionally, PO Rendon did not disturb any items in the center console. He did not see PO Panagiotopoulos search the vehicle.

§ 87(2)(b) and § 87(2)(b) each stated that they did not see any officer search § 87(2)(b)'s vehicle.

NYPD Patrol Guide Procedure 217-01 (Board Review 19), concerning the general procedure for vehicle collisions, requires officers to obtain the driver's license, vehicle registration, and insurance identification card from the drivers of all vehicles involved in the collision.

According to People v. Branigan 67 N.Y.2d 860 (Board Review 20), an officer performing a vehicle stop has the right to review the registration in order confirm the vehicle's ownership. As such, when a safety concern prevents an officer from allowing the vehicle's occupant to retrieve the documents, and when the occupant directs the officer to the location of the documents, the officer may perform a limited search for these documents in the indicated area of the vehicle.

§ 87(2)(g)  
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§ 87(2)(g)

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 21).
- PO Rendon, who has been a member of the NYPD for eight years, has been involved in seven previous CCRB complaints and has been the subject of sixteen prior allegations (Board Review 22). No allegations made against him have been substantiated § 87(2)(g)
- This is the first CCRB complaint involving PO Panagiotopoulos, who has been a member of the NYPD for one year (Board Review 23).

### **Mediation, Civil and Criminal Histories**

- Mediation was offered to § 87(2)(b) during an October 11, 2017 telephone conversation and discussed with him again during his October 17, 2017 CCRB interview. He declined to mediate the complaint because he feared retaliation.
- On December 19, 2017, the Office of the Comptroller informed the undersigned investigator that no notice of claim had been filed in regards to this incident (Board Review 24). A follow-up request was submitted on December 11, 2017. As of the writing of this report no response has yet been received.
- § 87(2)(b) has no history of criminal conviction (Board Review 25).

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Squad No.: 1

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date